

BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.

ATTORNEYS AT LAW

RALEIGH, NORTH CAROLINA

MAILING ADDRESS
POST OFFICE BOX 1800
RALEIGH, N.C. 27602

OFFICE ADDRESS
1600 WACHOVIA CAPITOL CENTER
150 FAYETTEVILLE STREET
RALEIGH, N.C. 27601

HENRY E. FRYE
OF COUNSEL

J. LEE LLOYD
SPECIAL COUNSEL

FOUNDED 1897

AUBREY L. BROOKS (1872-1958)
W.H. HOLDERNES (1904-1965)
L.P. McLENDON (1890-1968)
KENNETH M. BRIM (1898-1974)
C.T. LEONARD, JR. (1929-1983)
CLAUDE C. PIERCE (1913-1988)
THORNTON H. BROOKS (1912-1988)
G. NEIL DANIELS (1911-1997)
HUBERT HUMPHREY (1928-2003)

GREENSBORO OFFICE
2000 RENAISSANCE PLAZA
230 NORTH ELM STREET
GREENSBORO, N.C. 27401

WASHINGTON OFFICE
601 PENNSYLVANIA AVENUE, N.W.
SUITE 900, SOUTH BUILDING
WASHINGTON, D.C. 20004

WRITER'S DIRECT DIAL

L.P. McLENDON, JR.
EDGAR B. FISHER, JR.
W. ERWIN FULLER, JR.
JAMES T. WILLIAMS, JR.
WADE H. HARGROVE
M. DANIEL MCGINN
MICHAEL D. MEEKER
WILLIAM G. McNAIRY
EDWARD C. WINSLOW III
HOWARD L. WILLIAMS
GEORGE W. HOUSE
WILLIAM P.H. CARY
REID L. PHILLIPS
ROBERT A. SINGER
JOHN H. SMALL
RANDALL A. UNDERWOOD
S. LEIGH RODENBOUGH IV
MARK J. PRAK
JILL R. WILSON
MARC D. BISHOP
JIM W. PHILLIPS, JR.
MACK SPERLING
JEFFREY E. OLEYNIK
MARK DAVIDSON
JOHN W. ORMAND III
ROBERT J. KING III
V. RANDALL TINSLEY
S. KYLE WOOSLEY
FORREST W. CAMPBELL, JR.
MARCUS W. TRATHEN
JEAN C. BROOKS
JAMES C. ADAMS II
ALLISON M. GRIMM
ELIZABETH S. BREWINGTON
H. ARTHUR BOLICK II
J. EDWIN TURLINGTON
JOHN M. CROSS, JR.

JENNIFER K. VAN ZANT
KEARNS DAVIS
DAVID W. SAR
BRIAN J. McMILLAN
DAVID KUSHNER
DEREK J. ALLEN
CLINTON R. PINYAN
COE W. RAMSEY
ROBERT W. SAUNDERS
ELIZABETH V. LaFOLLETTE
GINGER S. SHIELDS
JENNIFER T. HARROD
CHARLES E. COBLE
CHARLES F. MARSHALL III
PATRICK J. JOHNSON
STEPHEN G. HARTZELL
JESSICA M. MARLIES
ANDREW J. HAILE
J. BENJAMIN DAVIS
CAROLINE E. RITCHIE
SARA R. VIZITHUM
C. SCOTT MEYERS
JOHN S. BUFORD
NICOLE A. CRAWFORD
ALEXANDER ELKAN
KATHERINE J. CLAYTON
KATHLEEN A. GLEASON
SUSAN M. YOUNG
DARRELL A. FRUTH
IAIN MACSWEEN
BENJAMIN R. NORMAN
ELIZABETH E. SPAINHOUR
JENNIFER C. NOBLE
DAVID L. NEAL
SARAH A.L. PHILLIPS
PHILLIP J. LONG
ANDREW T. TRIPP
KATHERINE A. SOLES

TELEPHONE (919) 839-0300
FACSIMILE (919) 839-0304

WWW.BROOKSPIERCE.COM

January 11, 2008

Via Hand Delivery

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Disability Rights Office
Attn: Ms. Cheryl J. King, Deputy Chief
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Complaint of David W. Dubay**
FCC No. 07-WB13477775 (Dubay), December 12, 2007

Dear Ms. King:

This firm is counsel to Young Broadcasting of Lansing, Inc., licensee of Television Station WLNS-TV, Lansing, Michigan ("WLNS").

I am writing in response to the informal complaint submitted to the Federal Communications Commission ("FCC") by Mr. David W. Dubay pursuant to Section 305 of the Telecommunications Act, 47 U.S.C. § 305, and Sections 79.2 *et seq.* of the FCC's Rules, 47 C.F.R. §§ 79.2, *et seq.* (the "Complaint"). The Complaint has been assigned file number 07-WB13477775 (Dubay) by your office.

WLNS received notice of the Complaint through a letter, dated December 12, 2007, from the FCC's Consumer & Governmental Affairs Bureau, Disability Rights Office.¹ This response is timely filed within thirty (30) days of the date of that letter.

It appears from the Complaint that Mr. Dubay believes that on October 18, 2007,² at approximately 7:20 p.m. ET, WLNS "did not have captioning for at least 20 minutes" and showed only "A PICTURE OF TRACKING THE STORM" during WLNS's severe weather coverage that evening.³ With all due respect to Mr. Dubay and after a diligent investigation by Station personnel, WLNS believes that Mr. Dubay is mistaken and that the Station provided closed captioning during the time period covered by the Complaint in compliance with the Commission's rules.

Based on the Complaint, WLNS undertook an investigation of the programming aired around the time Mr. Dubay allegedly viewed WLNS on October 18. WLNS is sensitive to the needs of its viewers, particularly those who are hearing impaired such as Mr. Dubay, and WLNS appreciates this opportunity to clarify what occurred on October 18.

Upon learning of the Complaint in mid-December 2007, WLNS thoroughly searched its records to determine if a copy of the broadcast of severe weather coverage at about 7:20 p.m. on October 18 had been retained. As the Declaration of Gene Shanahan (attached as Exhibit 1) states, the Station retains only tapes of newscasts on a routine basis and is not in the habit of retaining copies of its weather cut-ins or severe weather coverage; however, WLNS does in some cases keep copies of such programming for potential use in promotional materials. *See* Declaration of Gene Shanahan, ¶ 4.

WLNS searched multiple sources, including its own archives and third-party dubbing services, in an effort to locate a copy of the programming at issue in the Complaint. In spite of these efforts, WLNS was not able to locate a copy of its severe weather coverage during the 7:00 p.m. to 8:00 p.m. hour on October 18—the time period covered by the Complaint. As the Station has no policy to retain copies of weather cut-ins or severe weather coverage and, respectfully, as there is no legal obligation for a broadcast licensee to do so, WLNS is not able to provide the Commission with a copy of the programming at issue. However, the Station did locate a copy of about forty minutes

¹ Pursuant to the Commission's directive in its December 12, 2007, letter, a notice acknowledging the Station's receipt of the Complaint was sent via overnight mail to Mr. Dubay on December 19, 2007.

² All references herein to "October 18" refer to October 18, 2007.

³ The exact date and time of the Complaint as it relates to WLNS are somewhat unclear. The "Complaint Summary" narrative states that closed captioning was not provided by three television stations Mr. Dubay viewed on "Thursday night about 7:20 p.m." As the Complaint's "Date Received" is marked 10/19/2007, a Friday, WLNS assumes that Mr. Dubay was referring to programming on Thursday, October 18, 2007, at about 7:20 p.m. ET.

of severe weather coverage beginning at about 10:51 p.m. ET on October 18—a DVD copy of that broadcast is enclosed with this letter and demonstrates that WLNS was providing closed captioning throughout this late evening broadcast.

WLNS regrets that it is not able to demonstrate its closed captioning during the time covered by the Complaint visually through its programming, but the Station is able to demonstrate that it did, in fact, caption the WLNS programming that Mr. Dubay says he viewed. *See* Declaration of Don Carmichael, ¶ 3 (attached as Exhibit 3).

First, the Station uses a third-party service to provide closed captioning during certain emergency or weather-related broadcasts. As the invoice for services on October 18, from Broadcast Captioning & Consulting Services, Inc., attached as Exhibit 2, shows, WLNS was billed (and paid) for closed captioning services for several time periods on October 18. The invoice indicates that there were five news cut-ins during which the third-party service provided closed captioning to WLNS: from 4:30 p.m. to 4:35 p.m.; 6:55 p.m. to 7:40 p.m.—the time during which the Complaint indicates Mr. Dubay was viewing WLNS; 8:56 p.m. to 9:05 p.m.; 9:48 p.m. to 9:49 p.m.; and 10:12 p.m. to 12:57 a.m. This invoice shows that WLNS purchased and aired closed captioning for the very broadcast about which Mr. Dubay has complained.

Second, WLNS's Chief Engineer has personal, first-hand knowledge that the Station provided closed captioning during the time period covered by the Complaint because he was monitoring the Station's signal throughout the evening of October 18. In the declaration attached as Exhibit 4, Cory Cumming states that he was watching WLNS at his home on October 18 from about 6:00 p.m. to about 3:00 a.m. the next morning. *See* Declaration of Cory Cumming, ¶ 5. As Chief Engineer, Mr. Cumming is responsible for ensuring that the Station stays on the air, and he was watching WLNS in an effort to monitor WLNS's analog, digital, and DBS signals. *Id.* at ¶ 5. Mr. Cumming personally observed that the station provided closed captioning from 6:00 p.m. and throughout the night of October 18.

Because WLNS was using live captioning during the entirety of these five weather cut-ins on October 18—including the cut-in from 6:55 p.m. to 7:40 p.m.—any critical details about the weather-related emergency that were provided aurally would have also appeared visually, via WLNS's closed captioning. Thus, WLNS was in compliance with Section 79.2 of the Commission's rules on October 18 during the time period covered by the Complaint.

WLNS takes very seriously its obligation to make its programming accessible to individuals with hearing impairments and always strives for compliance with Section 79.2 and its related closed captioning and other rules. The Station sympathizes with Mr. Dubay's apparent anxiety about the weather situation that was developing on October 18, and his apparent concern that he had a difficult time finding information that satisfied him. However, and respectfully, Mr. Dubay was apparently not tuned in to WLNS from 6:55 p.m. to 7:40 p.m., or may not have had his television's closed captioning turned on while viewing WLNS. As Mr. Dubay was apparently flipping through the channels

during the 7:00 p.m. hour,⁴ perhaps WLNS has inadvertently been confused with another station.

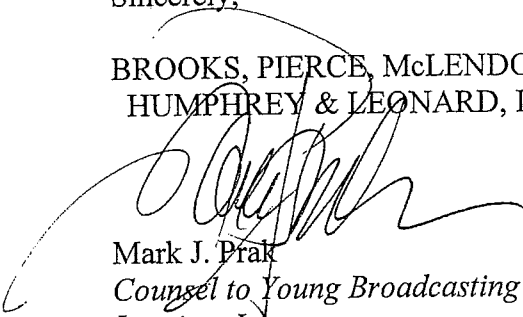
The signature of the Licensee's officer in the Certification of Licensee attached hereto indicates that he has read this letter and that to the best of his knowledge the information is true and correct.

Should you have any further questions regarding the above-referenced complaint, please do not hesitate to contact the undersigned.

⁴ Mr. Dubay says in the Complaint that he was watching at least three stations during the storm on October 18: WMSN-TV (Fox 47), WILX-TV, and WLNS.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.



Mark J. Prak

*Counsel to Young Broadcasting of
Lansing, Inc.*

Enclosures

cc: Francine Crawford (FCC, via e-mail)
David W. Dubay

CERTIFICATION OF LICENSEE

The signature of the Licensee's officer below indicates that he has read the foregoing letter and that to the best of his knowledge the information is true and correct.

Young Broadcasting of Lansing, Inc.

By:

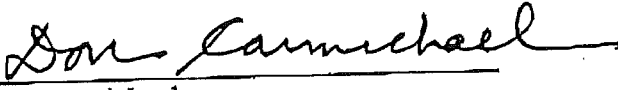

Don Carmichael
President, WLNS-TV

Exhibit 1
[Declaration of Gene Shanahan]

Declaration of Gene Shanahan

I, Gene Shanahan, hereby declare, under penalty of perjury, as follows:

1. I am greater than eighteen years of age and am competent to make this Declaration.
2. I am the Operations Manager of Station WLNS-TV, Lansing, Michigan ("WLNS" or the "Station"). I have held this position since 1993, and have been with the station since 1987.
3. My job duties involve responsibility for managing the Station operations. I have personal knowledge about WLNS's record keeping policies, including the Station's tape retention policies.
4. It is WLNS's standard procedure to retain tapes of its regularly scheduled news broadcasts for one (1) year from the date of broadcast. WLNS's standard practice does not include retaining tapes or other copies of unscheduled news advisories, weather cut-ins or severe weather broadcasts. Station personnel may, in some cases and on an ad hoc basis, retain tapes of weather cut-ins or severe weather broadcasts for future use by WLNS in promotional material.
5. I have reviewed the FCC's Notice of Informal Complaint regarding closed captioning during the evening of October 18, 2007 (the "Complaint"). Upon information and belief, there is no tape or other copy of WLNS's severe weather broadcast during the roughly 7:00 p.m. to 8:00 p.m. ET time period on October 18, 2007 (the time period covered by the Complaint).

I declare, under penalty of perjury, that the foregoing Declaration is true and accurate to the best of my knowledge, information, and belief.

1/10/08
Date

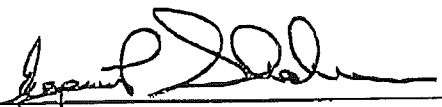

Gene Shanahan
Operations Manager, WLNS-TV

Exhibit 2
[Closed Captioning Invoice]

Broadcast Captioning & Consulting Services Inc.

BILL TO
WLNS 2820 East Saginaw Street Lansing MI 48912 Attn: Mr. Eugene Shanahan

PAID

DATE	INVOICE NO.	P.O. NO.	TERMS
10/31/2007	4001396		

DESCRIPTION	QUANTITY	RATE	AMOUNT
Real Time Captioning			
October 18 News cut-ins			
1630-1635	1	23.75	23.75
1855-1940	1	71.25	71.25
2056-2105	1	23.75	23.75
2148-2149	1	23.75	23.75
2212-0057	2.75	95.00	261.25
SubTotal			403.75
TOTAL			\$403.75

AMOUNTS ARE IN US FUNDS

150 Laird Drive, Suite #302, Toronto, Ontario, Canada M4G 3V7
 Telephone 1-800-296-6837 Facsimile (416) 421-7603
www.closedcaptioning.com

Exhibit 3
[Declaration of Don Carmichael]

Declaration of Don Carmichael

I, Don Carmichael, hereby declare, under penalty of perjury, as follows:

1. I am greater than eighteen years of age and am competent to make this Declaration.
2. I am the President of Station WLNS-TV, Lansing, Michigan ("WLNS" or the "Station"). I have held this position since December 1, 2006.
3. I have reviewed the FCC's Notice of Informal Complaint regarding closed captioning during the evening of October 18, 2007 (the "Complaint") and the Station's Response to the Complaint. In reliance on the declarations provided herein by Cory Cumming and Gene Shanahan, I believe the Response to be true and accurate and that WLNS provided closed captioning during the severe weather broadcast which is the subject of the Complaint.

[signature appears on the following page]

I declare, under penalty of perjury, that the foregoing Declaration is true and accurate to the best of my knowledge, information, and belief.

January 10, 2008
Date

Don Carmichael
Don Carmichael
President, WLNS-TV

Exhibit 4
[Declaration of Cory Cumming]

Declaration of Cory Cumming

I, Cory Cumming, hereby declare, under penalty of perjury, as follows:

1. I am greater than eighteen years of age and am competent to make this Declaration.

2. I am the Chief Engineer for Station WLNS-TV, Lansing, Michigan ("WLNS" or the "Station"). I have held this position since 2002.


3. I reside in the Rives Junction, Michigan, which is within the WLNS viewing area.

4. During the evening of October 18, 2007, I was aware that the WLNS viewing area was experiencing severe weather, including tornadic activity. As it is my responsibility to keep WLNS on the air, I monitored WLNS's digital, analog, and DBS signals throughout the storm that night.

5. I watched WLNS's severe weather coverage on October 18, 2007, from about 6:00 p.m. ET to about 3:00 a.m. ET the following morning. I personally observed that WLNS was displaying close captioning of its programming throughout this time.

I declare, under penalty of perjury, that the foregoing Declaration is true and accurate to the best of my knowledge, information, and belief.

1/10/08
Date


Cory Cumming
Chief Engineer, WLNS-TV

United States Government
Federal Communications Commission
Consumer & Governmental Affairs Bureau
Disability Rights Office
445 12th Street, SW
Washington, D.C. 20554

OFFICIAL

NOTICE OF INFORMAL COMPLAINT

Date: December 12, 2007

In Reply Refer To: 07-WB13477775 (Dubay)

THE COMPANY IDENTIFIED IN THE ATTACHED COMPLAINT IS REQUIRED TO RESPOND TO THIS NOTICE OF INFORMAL COMPLAINT WITHIN 30 DAYS OF THE DATE OF THIS NOTICE.

Failure of any person to answer any lawful Commission inquiry is considered a misdemeanor punishable by a fine under Section 409(m) of the Communications Act (Act), 47 U.S.C. § 409(m). Further, failure to comply with any order of the Commission can result in prosecution under Section 401(b) of the Act, 47 U.S.C. § 401(b). Section 501 of the Act, 47 U.S.C. § 501, and Section 503(b)(1)(B) of the Act, 47 U.S.C. § 503(b)(1)(B), provide for forfeiture penalties against any person who willfully fails to follow the directives of the Act or of a Commission order. The Commission can impose forfeiture penalties of up to \$1.2 million for certain types of violations.

The attached complaint was filed with the Commission pursuant to Section 713 of the Act, 47 U.S.C. § 613, and Section 79.2 of the Commission's Rules, 47 C.F.R. § 79.2. A letter acknowledging your company's receipt of this Notice and of the enclosed complaint should be sent to each consumer Complainant as soon as your company receives this Notice.

Pursuant to Sections 713 and 4(i) of the Act, 47 U.S.C. §§ 613, 154(i), and Section 79.2(c) of the Commission's Rules, 47 C.F.R. § 79.2(c), we are forwarding a copy of the complaint so that your company may satisfy or answer the complaint based on a thorough review of all relevant records and other information. Your company should respond specifically to all material allegations raised in each complaint and summarize the actions taken by your company to satisfy the complaint.

Your response should include: (1) the Complainant's name, and (2) the Case number. For hand deliveries, the Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m., Monday-Friday. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

Companies are directed to send copies of their responses to consumers at the same time their responses are forwarded to the Commission. Each company required to respond to this Notice is directed to retain all records until final Commission disposition of the complaints. If you have any questions regarding this Notice, please call or email Francine Crawford at (202) 418-2085 or Francine.crawford@fcc.gov, and leave a detailed message specifying the calling company name, the Case number, and the specific questions that you would like to have answered.


Cheryl J. King, Deputy Chief
Disability Rights Office/CGB


Attachment(s)
K:613/79.2

COMPLAINT FOR DAVID DUBAY

Complaint Type: Broadcast

Account Type: Residential

☐ Congressional Complaint ☐

IC Number:	07-WB13477775	Case Type:	Complaint
Date Received:	10/19/2007 	Complainant:	David W Dubay
Date Entered:	10/19/2007	Date Assigned:	10/23/2007
Entered By:	OSCARServer	Date Reassigned:	11/20/2007
Assigned To:	Francine Crawford/FCCIN	Service Date:	12/12/07
Date Closed:		Response Date:	01/12/08
Closed By:		Original Analyst:	Jada Barnes/FCCIN
Close Letter Needed?	<input checked="" type="radio"/> Yes <input type="radio"/> No	Purged By:	Purged Date:
		Removed By:	Removed Date:
Supervisor Check:	<input type="radio"/> Yes <input checked="" type="radio"/> No	Indecency Referral Code:	

Current Status: Pending Carrier Reports

Associated Case:

Complaint Summary:

Dear FCC; ; On Thursday night about 7:20pm Mid Michigan is under a serve weather alert/ tornado watch.; The Fire sirens went off in my neighborhood. I was on the telephone and my buddy on the phone said he; heard sirins. I am hard of hearing so i did not hear them.; ; I immediately turned the tv to see what was going on.; ; Three Tv stations was have emergency broadcasting. NO CAPTIONING.ON ANY STATION; DURING the Emergency broadcasting for AT LEAST 20 MINUTES that i know of.; ; THIS IS UNACCEPABLE HAVE A DELAY IN CAPTIONING WHEN THEY PREDICTED THIS STORM ALL DAY LONG. I am very concern with my safety as well as others.; ; 1. Fox 47 New Lansing Michigan - i know for a good 15 minutes there was no captioning. Then it started.; ; 2.Wilx tv 10 captioned for a few minutes then stopped. a few minutes later it started again.; ; 3 wlms- did not have captioning for at least 20 minutes. ; ; ALSO, THE ONLY THING ON THE SCREEN WAS A PICTURE OF TRACKING THE STORM.; Only could hear a voice (being hard of hearing i can not understand.) . No pic of the weatherman; so i had no chance of lip reading.; ; Below is the tv stations.; ; WILX TV 10 ; <http://www.wilx.com/news/headlines/10290737.html>; ; TV 6; ; <http://www.wlms.com/>; ; fox 47; ; <http://www.fox47news.com/>; ; I appreciate anything you can do in this matter.; ; Thank You; David Dubay; Lansing Michigan.

Apparent Carrier(s):	WSYM-TV, Fox 47, Lansing, MI WILX-TV (channel 10) WLNS-TV
<input type="checkbox"/> Yes<<< Check here if you wish to serve both a Wireline and Wireless carrier.	

Problem Number:			
Title: None	First Name: David	Middle Initial: W	Last Name: Dubay
Contact Name:	David W Dubay	Best Time to Call:	
Contact Number:	5173230860 Ext.	Consumer's Telephone Number:	Ext.
Fax Number:		TTY Number:	
Email Address:	davdubay@aol.com	Internet Address:	
PO Box:		Address:	2925 Lafayette Circle
City:	Lansing	State: MI	Zip: 48906

On Behalf Of:	
Company Name:	
Party's Name:	Relationship with the Party: